

BEFORE THE  
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 186

Served August 16, 1962

IN THE MATTER OF:

Application of D. C. Transit System, )	
Inc., for a Certificate of Public )	Application No. 209
Convenience and Necessity ( )	Docket No. 23

APPEARANCES:

John R. Sims, Jr. and Harold Smith, attorneys for the applicant.

Manuel J. Davis, attorney for W. V. & M. Coach Company, protestant.

D. C. Transit System, Inc. (hereinafter called DCT) filed an application for a certificate of public convenience and necessity to authorize it to operate as a regular route common carrier for passengers over the following route:

(1) Regular route - between the junction of U. S. No. 240 (Wisconsin Avenue) and Western Avenue (D. C.-Maryland Line) and the Central Intelligence Agency site, Langley, Virginia; over U. S. No. 240, Maryland State Highway No. 187 (Old Georgetown Road), Maryland State Highway No. 188 (Wilson Lane), Maryland State Highway No. 190 (River Road), Interstate Highway No. 495 (Capital Beltway), Virginia State Highway No. 193, Virginia State Highway No. 123 and access roads to the CIA and return, serving all intermediate points between Wisconsin and Western Avenues, N.W. (D. C.-Maryland Line) and the west end of the Potomac River crossing of Interstate Highway No. 495. Service between the west end of the Potomac River crossing of Interstate Highway No. 495 and the Central Intelligence Agency site, Langley, Virginia, being operated with closed doors, permitting passengers to alight only upon arrival at the CIA and to board only at the CIA.

(2) Alternate route - between the junction of U. S. No. 240 (Wisconsin Avenue) and Western Avenue (D. C.-Maryland Line) and the Central Intelligence Agency site, Langley, Virginia; over U. S. No. 240, Maryland State Highway No. 187 (Old Georgetown Road), Maryland State Highway No. 188 (Wilson Lane), Maryland State Highway No. 190 (River Road), Interstate Highway No. 495, George Washington Memorial Parkway and access roads to the Central Intelligence Agency and return, serving all intermediate points between Wisconsin and Western Avenues, N.W. (D. C.-Maryland Line) and the west end of the Potomac River crossing of Interstate Highway No. 495. Service between the west end of the Potomac River crossing of the Interstate Highway No. 495 and the Central Intelligence Agency site, Langley, Virginia, being operated with closed doors, permitting passengers to alight only at the CIA and to board at the CIA.

Notice of the application and hearing was in compliance with the directions of the Commission. Protest was timely filed by the Washington, Virginia and Maryland Coach Company, Inc. (hereinafter called W. V. & M.) as to that portion of the application which would authorize DCT to operate in Virginia. Hearings on the application were held on July 16 and 24, 1962, before Examiner Russell W. Cunningham.

#### FACTS OF THE CASE

Four witnesses testified on behalf of the application, and two witnesses on behalf of protestant. A witness for DCT (Goad) testified at length concerning DCT's operation as a regular route common carrier of passengers in the District of Columbia and in Montgomery County, Maryland. It appears that the bulk of Transit's passengers are carried from their place of residence in the morning from Montgomery County and outer Northwest Washington to the downtown business district of Washington or through the downtown area to a place of business in other suburban areas. He testified at length as to the service provided through Montgomery County into the District of Columbia, both in the rush and non-rush hour periods, and points of transfers on various routes in Montgomery County and the District of Columbia. He stated that the regular route sought in this application would be used during an interim period until the completion of Interstate Highway No. 495 and the completion of the extension of the George Washington Memorial Parkway. Upon the completion of these two roads, the service would be discontinued over Virginia Routes 193 and 123. The alternate route is the more preferable in that it would cut down the mileage traveled, and thereby reduce the running time of the vehicles. This witness also testified at length concerning a proposed fare schedule for the proposed service. The fare proposed is higher than the interline fare now used for a longer distance. This witness also testified

as to the company's financial statements, and several exhibits were placed in the record by stipulation of counsel.

Another witness for the applicant (Bell) testified as to the equipment to be used on the proposed operations.

D. C. Transit called a witness (Bletch) to testify in its behalf. It appears that he was to appear as a substitute for the president (Khuen) of one of the local civic associations. Upon examination, it developed that this witness was not authorized to appear and testify on behalf of the association, and the Examiner properly refused to take his testimony on this matter.

Counsel for applicant then requested that the hearing be continued in order that the president, who had been present at the beginning of the hearing and had to leave on urgent business, could appear at a later date and testify. With the concurrence of counsel for the protestant, the Examiner so ruled. D. C. Transit had earlier sought to have several letters addressed to the Commission concerning this application be admitted into evidence. Counsel for protestant objected, and the Examiner properly sustained the objection.

At this stage of the proceeding, counsel for the applicant stated that his presentation was concluded except for the continuance to allow the president of the citizens' association to appear and testify. The hearing was then continued until July 24, 1962.

On the second day of hearing, the president of the civic association appeared and testified on behalf of the application. He stated that he was authorized to appear and testify upon the unanimous consent of the association's executive committee, all of whom were in favor of supporting the application. The witness stated that the individual members of the association were not polled, and he had no personal knowledge of any member of the association, except himself, who could and would use the proposed service, nor, he stated, did he know of any members of the executive committee who would personally use the service. He stated that there were occasions when he himself might need the service to go to the CIA Building from his home in Northwest Washington. This witness also testified, on cross examination, that in his opinion the service proposed under this application was more desirable than the interline arrangement proposed to the Commission in an application by the protestant. This witness also introduced Exhibit No. 9, which is a document signed by the secretary of the association and offered by the witness as his authorization to appear and testify and as the authorization for the extent of his testimony insofar as he would testify for the association. The protestant strongly objected to the Examiner's ruling allowing Exhibit 9

to be entered into evidence and made a part of this proceeding. The Commission is of the opinion that the Examiner's ruling was correct. The applicant then called another witness (Canby) to testify. Counsel for the protestant vigorously objected on the ground that the applicant had stated at the conclusion of the first day of hearing that his case was concluded except for the witness Khuen. The Examiner reversed his previous ruling and allowed the witness to testify. Ordinarily, the Commission would be most reluctant to permit a party to re-open a case once he has officially concluded his presentation. However, in this instance, all the parties to this proceeding were reassembled for the purpose of taking further testimony, and while in a court where technical rules of evidence prevail a different ruling might be preferable, the Commission feels that the Examiner properly, in the public's interest, allowed the witness to testify. However, the Commission feels that it should note that it feels that this is the exception rather than the rule, and that it will normally expect all parties to proceed when scheduled. The witness (Canby) testified that he had been authorized by his executive committee to appear and testify. It appears the executive committee was composed of four individuals including the witness. The members of the association were not contacted about the resolution, and therefore the witness did not have personal knowledge that any member of his association could or would utilize the proposed operation.

Two witnesses testified in behalf of the protestant. The first witness (Wheeler) testified at length concerning the operations of the protestant, including an application presently before the Commission for decision (Docket No. 17). W. V. & M. proposes, by its application, to serve from the CIA Building over Interstate Highway No. 495 to its intersection with River Road in Maryland, where it contemplated tying in, through an interline agreement, with D. C. Transit's present Maryland service. The witness discussed various aspects of the present service rendered by both DCT and by W. V. & M. On cross examination, he stated that the applicant's proposed operation would facilitate the movement of passengers from Montgomery County and outer Northwest Washington to the CIA Building in Virginia. The second witness called by protestant (DeStefano) testified principally about the financial condition of his company.

The protestant also indicated that it was presently authorized to, and in fact did, operate over Virginia State Highway 193 and Highway No. 123 and access roads to the CIA. It contends that Sections 4(e) and 4(g) of Article XII of the Compact prohibit the Commission from authorizing an applicant to operate over the route of any holder of a certificate unless and until it should be proved to the satisfaction of the Commission that the service rendered by the certificate holder is inadequate to the requirements of the public convenience and

necessity, and that before the Commission can make such a determination the certificate holder must be given reasonable time and opportunity to remedy any inadequacy before the granting of any such authority to operate over that route.

#### ISSUES

1. Is the applicant fit and financially able to perform the proposed transportation?
2. Is the proposed transportation required by the public convenience and necessity?

#### OPINION

The Commission is of the opinion and finds:

1. That the applicant is fit and financially able to perform the proposed transportation.
2. That the proposed transportation is required by the present and future public convenience and necessity.
3. That Sections 4(e) and 4(g) of the Compact are not applicable to this proceeding in that the applicant would be operating closed doors over Virginia Routes 193 and 123, and therefore cannot be considered to be operating over the route of another carrier. This opinion is buttressed by the fact that the passengers boarding the bus at the CIA Building are destined for Maryland and, conversely, those arriving at the CIA Building will have originated in Maryland. Thus, there is no conflict or competition between the two carriers over those highways.
4. That the rates proposed by the applicant are excessive and that a tariff setting forth a lower rate of fare be submitted to the Commission for its approval before any operations are conducted under the certificate to be hereinafter issued, and, in any event, within thirty (30) days of the date of this order.
5. That the Compact confers no incidental charter or special operating rights upon the holder of a certificate issued by the Commission, and that no charter, sightseeing or other special operations are to be originated or conducted in Virginia as a result of issuance of this certificate.

THEREFORE, IT IS ORDERED:

1. That Certificate of Public Convenience and Necessity No. 5 be, and it is hereby, granted to D. C. Transit System, Inc., to transport passengers for hire as follows:

REGULAR ROUTE COMMON CARRIER OPERATION:

Passengers, and their baggage, and express, mail and newspapers in the same vehicle,

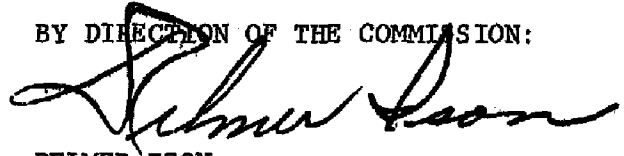
(1) Regular route - between the junction of U. S. No. 240 (Wisconsin Avenue) and Western Avenue (D. C.-Maryland Line) and the Central Intelligence Agency site, Langley, Virginia; over U. S. No. 240, Maryland State Highway No. 187 (Old Georgetown Road), Maryland State Highway No. 188 (Wilson Lane), Maryland State Highway No. 190 (River Road), Interstate Highway No. 495 (Capital Beltway), Virginia State Highway No. 193, Virginia State Highway No. 123 and access roads to the CIA and return, serving all intermediate points between Wisconsin and Western Avenues, N.W. (D. C.-Maryland Line) and the west end of the Potomac River crossing of Interstate Highway No. 495. Service between the west end of the Potomac River crossing of Interstate Highway No. 495 and the Central Intelligence Agency site, Langley, Virginia, being operated with closed doors, permitting passengers to alight only upon arrival at the CIA and to board only at the CIA.

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Provided: this authority does not confer the right to originate, or conduct in any manner, charter or special operations in the State of Virginia.

2. That D. C. Transit System, Inc., file within thirty (30) days a tariff setting forth a schedule of fares for the transportation authorized in paragraph "1" above.

BY DIRECTION OF THE COMMISSION:

A handwritten signature in dark ink, appearing to read "Delmer Ison", written over the typed name.

DELMER ISON  
Executive Director